

Rental New Construction Project Workshop Questions and Answers

Issued June 30, 2008

Eligibility

Q: If a project involves both rehab and new construction, which NOFA should I apply under?

A: Contact the Department to discuss the specifics of your project so that we may best determine whether you should apply under the rehab or new construction NOFA

Q: What does the limit of two sites per application mean?

A: Applicants may apply for a maximum of two sites as follows: (a) two single parcels that will be combined into a single project under common ownership or (b) one single parcel and one set of contiguous lots that will all be combined into a single project under common ownership by the time the HOME loan closes; or (c) two sets of contiguous lots if the lots will be combined into two single parcels and both parcels will be combined into a single project under common ownership by the time the HOME loan closes.

This limitation applies to applicants that submit an application consisting of either one project, or two projects (i.e. CHDOs that are eligible to submit two rental projects, or CHDOs or State Recipients that submit a rental project and a first-time homebuyer project.) See p. 16 of the NOFA for more information. For homebuyer projects, contact HOME staff concerning this requirement.

Where contiguous parcels will be combined as part of the development process into one parcel, provide Project Development Plan (PDP) documents that cover the parcels which will be combined into one parcel. Example: submit a single appraisal for contiguous parcels, not one appraisal for each parcel, and submit only one Phase I that covers all of the contiguous parcels as one site.

Q: Is there a format for HOME's required "pending lawsuit letter"? Which parties are involved in this certification?

A: There is no required format for this letter. The HOME applicant submits the letter. We expect the applicant to do its due diligence necessary to make sure that there are no pending lawsuits involving any entity which would affect the implementation of the proposed project.

Q: Who should sign the Universal Certifications and Identity of Interest Disclosure in the Universal Application?

The person / position authorized in the HOME Authorizing Resolution to sign the application should be the entity signing this form on behalf of the State Recipient or CHDO applicant because this is the person who has been given the legal authority to submit the HOME application on behalf of the State Recipient or CHDO. The HOME applicant should consult with all development team members to fully disclose all “Related Parties” as instructed on this form.

Site Control

Q: I realize that the NOFA says that site control must be through the expected award date, but must it be in place at all times?

A: Yes, the Uniform Multifamily Regulations (UMRs) require that the Sponsor always have site control. Therefore, you must not let the site control document expire – otherwise this would be considered a violation of the UMRs. Also, if a purchase agreement lapses, HUD’s NEPA requirements forbid entering into an extension or new purchase agreement until the Authority to Use Grant Funds (AUGF) is issued.

HUD has advised the Department that only an Option Agreement is considered acceptable, and that a Purchase Agreement is considered, technically, to be a choice-limiting action. However, we are aware that many developers have already entered into a Purchase Agreement, so we won’t mandate the use of an Option Agreement until next year. If possible, we encourage you to use an Option Agreement this year, but it will be required (instead of a Purchase Agreement) next year.

Please ensure that any site control document is conditional upon completion of the HUD NEPA environmental review process. Furthermore, if your Option Agreement is due to expire before you have received your AUGF be sure to extend that Option Agreement before the expiration date. Entering into a new option or other agreement after expiration will be considered a choice limiting action.

Housing Element Compliance

Q: How can I get the 50 points for Housing element compliance?

A: CHDOs automatically receive these points since they are not responsible for producing a housing element. State Recipients must have a housing element that is in substantive compliance by HOME’s application due date in order to get these points.

To be considered in substantive compliance, the housing element must be deemed to be IN COMPLIANCE by the Department. This means the Department must have completed its final review and issued a letter finding the jurisdiction's final adopted housing element to be IN COMPLIANCE.

Pursuant to State Housing Element law, the Department has sixty (60) days to review draft housing elements, and ninety (90) days to review adopted housing elements. For jurisdictions whose housing element is required to be updated by June 30, 2008, as well as jurisdictions whose current adopted housing element has been deemed OUT OF COMPLIANCE, these review periods should be considered when determining when to submit the housing element to the Department in order to receive final approval by the HOME application deadline. See HOME Management Memo 08-01 for more information.

Positive Experience Points

Q: Can I get credit on the Universal Application (UA) Experience form for Rental New Construction projects with a Notice of Completion date by August 14, 2008 even if they were placed in service after August 14, 2008?

A: Yes. HOME will accept either date as long as one of them is on or before August 14, 2008. If using the Notice of Completion date, and not the Placed-in Service Date, please attach a separate piece of paper to your UA Experience Form which lists the project name, address, and Notice of Completion date.

Q: Can I list Rental New Construction projects on the UA Experience Form that were developed for another HOME Program?

A: Yes. Any subsidized rental new construction projects of the applicant, developer, owner, or managing general partner may be listed on this form. To receive State HOME rating points for this project it must have been completed or placed in service between August 15, 2003 – Aug 14, 2008.

Q: On the UA Experience form, can an Applicant and their Developer get credit twice for participating in the same project?

A: No. A project can only receive credit once on the UA Experience form.

Q: What community development awards can be listed on the Housing and Community Development Experience form in the HOME Supplement?

A: With the exception of planning/ technical assistance and operations grants, any award made to the applicant between 2001-2007 for a community development activity that could be considered an eligible activity under the CDBG program can be listed on this form. Housing awards made to the applicant during this period can also be listed.

Q: Can the same project be listed for points on both the UA Experience Form and the HOME Supplement Experience form?

A: Yes, as long as it qualifies for points pursuant to the instructions on each form.

Q: Can experience points be awarded to co-developers?

A The Department will consider each situation based upon the actual facts. If you were a co-developer on a project, indicate this on the Universal Application Experience Worksheet and attach separate documentation to this worksheet that explains how you as co-developer:

- a) effectively controlled most key aspects of the development process, as evidenced by the partnership agreement, development agreement, and other indicators of control as determined by the Department;
- b) had sufficient staff to manage the development process for all of the developments that you were involved with during the development period; and
- c) received the majority share of the developer fee for the project.

Negative Experience Points

Q: How can we get information on project deadlines we may have missed or late reports?

A: Contact your HOME Representative.

Q: I have missed three deadlines on a HOME funded project. I understand that means I will be held-out from applying in future HOME project rounds until the project is completed. Will the point restoration provision of the NOFA wipe out these penalties so that if I meet my expenditure deadline, I won't be held out?

A: No. The point restoration provision affects Capability performance points only, not the hold-out provisions.

Financial Feasibility

Q: Is there a maximum contingency allowance?

A: There is no hard and fast rule on maximum contingency, but it must be reasonable.

Q: May I have operating costs lower than \$300 or higher than \$400 per unit per month?

A: You may not have operating costs lower than the TCAC minimums. If you show operating costs outside the \$300-\$400 safe harbor range, provide audited financial reports from similar projects in the area of the proposed project showing operating costs in support of your proposed amount.

Q: Will HCD consider cash flow after the first 15 years?

A: Yes, if the trend over the years indicates that the project will have negative cash flow after year 15, HCD may require modifications to the project to ensure affordability.

Q: May the asset management fee exceed \$12,000 per year?

A: Only if a local government funding commitment letter for the project specifies the higher allowable fee and/or the local government has a written policy specifying the higher fee. The local government project loan documents at closing must also stipulate this higher fee.

Q: How should rent levels for projects with HUD 202 funds be shown on the Universal Application?

A: On the Universal Application Rents Worksheet, enter either the HOME maximum rent for the AMI level, or the maximum rent of another more restrictive funding source according to the directions on this worksheet. On the Universal Application Subsidies Worksheet, in the “Gross Monthly Contract Rent” column, enter the Fair Market Rent or Payment Standard for that AMI level and unit size. Make sure the “Restricted Rents” button is clicked on both the Subsidies Worksheet and the Cash Flow Worksheet.

The form will calculate the difference between the Gross Monthly Contract Rent and the Maximum Restricted Net Rent. Preparing your application in this manner will enable the Department to evaluate all HUD 202 projects in the same way.

The Department understands that the HUD 202 program requires the project proforma to show zero net distributions every year. If the project is taken to Loan and Grant Committee, a proforma will be prepared that fulfills this requirement, even though the built in formulas in the UA form don’t enable you to show this kind of budget balancing.

Note: HUD 202 applicants should submit documentation with their Rents Worksheet that substantiates the Fair Market Rent or Payment Standard for their county for each AMI level and unit size under the 202 Program.

Q: If the underwriting requirements of HUD 202, HUD 811, HUD Supportive Housing Program or CalHFA Mental Health Services Act (MHSA) projects differ from the UMRs, how should the project be proposed?

A: With the exception of Social Services/Social Programs expenses as noted in the question below, propose the project in accordance with the underwriting requirements of these specific programs, and provide an explanation of each differing requirement where it arises in completing the application. Provide this explanation either in an “Applicant Comments” section of the applicable worksheet, or on a separate page attached to the hard copy of the applicable worksheet. The Department will evaluate whether this difference is acceptable. If you do not footnote the basis for this difference, the Department may assume you made an error in underwriting your project.

Q: How should social services costs be listed on the Universal Application Operating Budget?

A: The social services coordinator salary should be shown on Line 11 of the UA Operating Budget. This expense is considered part of the building’s operating budget pursuant to UMR 8301 (j).

For applications to HOME and other HCD programs, other “Social Programs/Social Services” expenses are not considered part of the building’s operating budget. (This category of expenses is not an eligible use of HCD funds.) Hence, if you have these expenses, list them on Line 137 of the Operating Budget, not on Line 69. Line 137 is for informational purposes only, and will not be reflected in project cash flow, pursuant to UMR requirements.

Q: How should HOME Activity Delivery, Administration, and CHDO Operations uses/costs be shown in the Universal Application?

A: HOME Activity Delivery funds are available for staff and overhead costs directly related to carrying out a project. Administration funds are for general management oversight and coordination costs. Activity Delivery and Administration funds are available only to State Recipients. CHDO Operations funds are for reasonable and necessary costs for the operation of the CHDO, including things such as employee salaries, training, travel, office rent, equipment, and supplies. These funds can also be used for the same types of expenses as State Recipient Activity Delivery and Administration.

Activity Delivery, Administration, and CHDO Operations are a grant from the HOME program and are not part of the HOME loan amount. Hence, these funds should not be listed on the Development Sources, Development Budget, or Permanent Sources and Uses Worksheets. However, if the applicant doesn’t want Activity Delivery, Admin or CHDO Operations funds as a grant, but instead wishes to use the maximum possible amount of HOME funds in the project

budget, then on the UA General Information Worksheet, put \$0 in these item blocks, and put \$4,000,000 in the “HOME Activity Amount” item block.

Conversely, if an applicant uses their Activity Delivery, Administration, or CHDO Operations funds to cover an eligible cost listed on the UA Development budget, (for example, use of Activity Delivery for the Prevailing Wage monitor), note in your application narrative and in the Development Budget on the Applicant Comment line for this item that this cost (specify amount) is being paid for with these funds. If the cost is being covered partially with HOME loan funds and partially with Activity Delivery, Administration, or CHDO Operations, put the loan portion in the Development Budget itself, and the grant portion in the Narrative and in the Development Budget Comment Line as instructed above. Note: Activity Delivery costs may be used to pay for any project related soft costs normally paid for by the developer; however, we caution State Recipients to retain enough Activity Delivery to meet their due diligence requirements.

Q: How should managers units be shown on the Universal Application Rents Worksheet?

A: If the manager’s unit will be an income-restricted unit, display this unit by bedroom size on lines 19-24 of the Universal Application. If the manager’s unit will be restricted, but you are not charging rent for this unit, leave the “Rent Limit Calc Formula cell blank. Fill in only the AMI level, and the number of units by bedroom size.

If the manager’s unit/s will be an unrestricted unit, display this unit by bedroom size on lines 121 -123 of the Universal Application. If you are not charging rent for this unit/s, leave Column H for these rows blank. Fill in only the number of units by bedroom size (Columns C and D).

Q: How will the rating factor “Greatest Percentage of HOME Units” be scored?

We have not finalized the scoring procedure/points for this yet. Because CHDO projects typically cannot have more than 49% of their units restricted due to Article XXXIV, CHDOs and State Recipients will likely be scored separately on this rating factor to avoid giving State Recipients an unfair competitive advantage on this factor.

Appraisal

Q: If I've already purchased the property, how much can be charged as an eligible project cost?

A: The maximum eligible purchase price is the lesser of the current appraised value or the amount of the last arms length transaction. Verifiable carrying costs may also be charged. Thus, the total amount may exceed the appraised value only by the amount of verifiable carrying costs.

Market Study

Q: If my market study was prepared prior to February 15, 2008, is an update allowed?

A: No. Unfortunately, you can't really update a market study without doing a whole new market study.

Q: If my appraisal was prepared prior to February 15, 2008, is an update allowed?

A: No. A new appraisal must be prepared. Due to the volatility of the market, and changing values for comparable properties, an update letter will not suffice.

Phase I and NEPA

Q: When must the Phase I be prepared?

A: If a Phase I has never been prepared for this site, it must be prepared according to ASTM 1527-05 on or after February 15, 2008.

If a Phase I has already been prepared meeting ASTM 1527-05 but it is older than February 15, 2008, an update letter meeting the requirements set forth on page 38 of the HOME supplement (HOME update letter) must be submitted. We prefer that this update meet the requirements of the ASTM Standard, but it is not required.

Any updated Phase I or HOME update letter must be prepared by the same entity that prepared the most recent Phase I, and the application must contain all Phase I and Phase II reports for the property that you are aware of.

Q: What activities are not considered choice limiting actions?

A: As a general rule, any action on the site or on behalf of the project by anyone is a choice limiting action if it occurs once your Governing Body approves submittal of the HOME application, and before the Authority to Use Grant funds

is issued. However, exceptions to this general rule include activities such as: carrying out environmental and other studies, submitting funding applications, inspections and testing for hazards or defects, purchase of insurance, payments on HUD loans or HUD-guaranteed loans, and improvements that do not alter environmental conditions and are necessary to control the effects from disasters or imminent threats to public safety. For more information on activities not considered choice limiting actions, see [24 CFR 58.34](#).

Q: May we clear weeds on a site without triggering choice limiting actions?

A: Yes, clearing weeds is an exempt activity because of the fire danger inherent in overgrown sites.

Q: Is soils testing recommended for sites that were formerly row crops as well as sites that were formerly orchards or vineyards?

A: Row crops do not generally pose the same kind of danger from pesticide build-up in the soil as do orchards and vineyards because the soil in row crops is rotated. Hence, unless the Phase I specifically identifies pesticide contamination as a possible problem on a row-crop site, soils testing may not be necessary.

However, applicants proposing projects on sites that were formerly orchards and/or vineyards may be required to submit to the Department an analysis of soil testing for pesticides remaining in the soil. It is recommended that this testing be performed prior to submitting the HOME application so that the applicant can determine whether any pesticide remediation is required and include the cost for such remediation in the development budget.

Q: Our property's Phase I indicates that there are open, unresolved, contamination issues. How do we show that we have budgeted enough funds to mitigate these issues?

A: Include a statement in the Universal Application narrative describing the issue, what mitigation is needed, how much it will cost, and show this in line 31 (Environmental Remediation) in the Development Budget. It is very important that the developer review the Phase I to determine all possible environmental remediation and address it before submitting the HOME application.

Floodplain Analysis

Q: If any part of the site is in the floodplain, what kind of an analysis does HOME require?

A: If any part of site is in the floodplain, you must provide a narrative and supporting documentation with the HOME application which discusses with specificity the following: (1) the sites outside of the floodplain that were

considered for the project and the reasons for rejection of these sites; (2) the negative and positive impacts of building in a floodplain; and (3) the steps that have been or will be taken to minimize the negative impacts to lives and property of building in a floodplain.

Q: For sites not in a flood plain, can we use a flood certification prepared by a local government or title company in lieu of the flood certification prepared by a flood certification company?

A: You can provide a title company flood certification, but not a local government letter or flood certification.

Q: What does a FEMA Flood Certification form look like?

See the sample form attached to the e-mail containing this document.

Geotechnical Report

Q: When does this report need to be updated?

The geotechnical report must be updated if it is older than February 15, 2007. In this instance, an update letter prepared by a state-licensed engineering firm is acceptable if provided along with the original report. The update letter must clearly state that there have been no significant changes to the site since the original report (e.g. no grading or seismic event), no changes in the type of project being developed (e.g. from single-story to townhouse), and no other changes in factors that would affect the conclusions of the original report. If no changes have occurred, new borings are not required. The update letter does not have to be prepared by the same firm that prepared the original report.

Preliminary Construction Cost Estimate

Q: Should the preliminary construction cost estimate be consistent with the Development Budget?

A: Yes.

Relocation

Q: If the owner currently lives on the project site, but will move once the site is sold, is relocation triggered?

A: No

Q: How far back in time might relocation benefits be required?

A: This is a case by case determination. Please consult with the HOME program.

Q: Do squatters have relocation rights?

A: No, squatters are not considered displaced if it is determined that they are in unlawful occupancy. However, the developer could provide assistance (such as finding emergency or transitional shelter) to facilitate the development of the project.

Q: If a property is no longer occupied because it has been “red-tagged”, is relocation still required?

A: Please ask your relocation consultant to consult with your HOME Representative to discuss the specific facts. Depending on the facts, it is possible that relocation assistance is not required.

Local Approvals

Q: Who should complete the Local Approvals form in the HOME Supplement?

A: The form should be completed by the local government official or officials with the best knowledge of which local approvals have been obtained or are still needed by your project. All local officials completing the form should sign and date the form as instructed. The HOME applicant and project developer should also sign this form.

Q: If zoning is subject to an additional step, i.e. annexation or a Conditional Use Permit needing to be issued, does it count for Readiness points?

A: No. You don't have your entitlement unless the zoning approval is unconditional.

State Objectives

Q: How will projects be compared to calculate State Objective rents?

A: We will look at the percentage of HOME units with rents at or below 50% AMI. Because CHDO projects typically cannot have more than 49% of their units restricted due to Article XXXIV, CHDOs and State Recipients will likely be scored separately on this rating factor to avoid giving State Recipients an unfair competitive advantage on this factor. Within these two groups, points will be awarded based on what is proposed by the applicant pool.

Q: Can projects proposing use of Mental Health Services Act (MHSA) funds get the State Objective Points for Special Needs Financing?

A: Yes.

Q: Regarding the 50 State Objective points for completing a project within 30 months, does this have to be the same type of project as the proposed project? Are more than 50 points awarded if there is more than 1 project that qualifies?

A: The project does not need to be the same type of project as the proposed project, i.e. a HOME FTHB project that was completed within 30 months can get you these points even if your application is for a Rental New Construction project. Project completion will be evidenced by the filing of the Project Completion Report for that project.

The full 50 points will be awarded for one qualifying project. No additional credit will be provided for more than one qualifying project. The Department will gather the information needed to evaluate this State Objective. No additional information needs to be submitted with your application.